

REMARKS

The non-final Office Action of May 21, 2004 has been received and carefully considered. Currently, claims 1-6, 8-28 are pending with claims 23-28 being withdrawn from consideration as being directed to a non-elected invention. It is respectfully requested that the Examiner reconsider the instant application in view of the following remarks

With regard to the Examiner's rejections of:

Claim 1-4, 6, 8, 9, 11, 13 and 14, under 35 U.S.C. § 102(b), as being anticipated by the disclosure of the Kolenik ('198) patent,

Claims 6, 10-17 and 22, under 35 U.S.C. § 103 as being unpatentable over the combination of teachings of the Baumann et al. ('292) and Kolenik ('198) patents,

Claims 3-5, under 35 U.S.C. § 103 as being unpatentable over the combination of teachings of the Baumann et al. ('292), Kolenik ('198) and Engebretson et al. ('333) patents, and

Claims 18-21, under 35 U.S.C. § 103 as being unpatentable over the combination of teachings of the Baumann et al. ('292), Kolenik ('198), Engebretson et al. ('333), and Berrang et al. ('669) patent documents,

each of the above rejections is respectfully traversed.

Specifically, the Applicant notes that the Examiner's statement in the May 21st Office Action, at page 2, that "while the applicants arguments are understood regarding the limitation 'without the provision of a separate energy storage housing,' the language in the claims to define this feature is not sufficient to define over the prior art of record..." indicates the Examiner's belief that he understands the previous arguments presented in the Amendment of February 10, 2004. However, the Examiner's explanation of the Kolenik reference following the quoted section above reveals that the Examiner not only did not understand the previous argument regarding the limitation "without the provision of a separate energy storage housing" of independent claim 1, but the Examiner does not understand the invention described in the specification.

At least at paragraphs [0035] and [0044] of the present application, the claimed feature of "the energy storage is disposed directly within the first chamber without the provision of a separate energy storage housing" is explicitly described as being a battery without a housing of its own. Please see MPEP Chapter 2112 (May 2004) regarding the requirement to give the claim terminology the broadest reasonable interpretation consistent with the specification, and the newly added guidance requiring the Examiner to determine the presence of an explicit definition of the claim terminology. In that regard, the present specification clearly teaches that the solid electrolyte 14, i.e., polymer electrolyte system, as well as the anode of lithium metal and cathode are placed within chamber 40 of the housing which, when hermetically sealed, prevents the evolution of gas in the chamber from detrimentally affecting the electronic unit 12. That is, the single hermetically sealed chamber 40 of the single housing 10 functions like the conventional (standard) battery housing in preventing the detrimental effects of the evolution of gas from the components of the battery.

Further, the Examiner has also misunderstood the teachings of both Baumann et al. (Figure 2, element 25; column 3, lines 42-64) and Kolenik (see Figures 2 and 4, elements 260, 261; column 4, lines 4-16) since the patentees clearly teach one of ordinary skill in the prior art of implantable medical components, such as a pace maker or hearing aid, that a "direct voltage source" or "standard battery" is employed. Such a "direct voltage source" or "standard battery" are those conventional types of batteries which have their own casing or housing, e.g., see Langer ('775)(Figure 1, elements 24) or Weinberg et al. ('946) (Figure 1, element 16), Fiedler ('272) (Figures 1, 2, elements 14, 24, 26, 28, 32). That is, the electrical and chemical components of the battery are contained inside a housing or casing which enables the standard battery to then be placed inside the housing of the medical device. There is absolutely no explicit discussion or implicit recognition that the "direct voltage source" or "standard battery" is anything more than what has been conventionally, commercially available and that the "direct voltage source" or "standard battery" can

be or is to include only the electrical/chemical components of a battery alone without the conventional housing for the components. In fact, Figs. 2 & 4 of Kolenik clearly show two separate batteries 260, 261 in their own separate housings that are disposed within the differently shaped chamber 233 of his pacemaker housing, electrical connecting wires 263, 264 being shown running from the battery casings through chamber 233 to the pacemaker electronics.

Since MPEP Chapter 2112, and supporting U.S. case law cited therein, requires the Examiner to give the claim terminology the broadest reasonable interpretation consistent with the specification, and since, as described above, the instant specification provides an explicit definition of the claimed phrase "wherein the energy storage is disposed directly within the first chamber without the provision of a separate energy storage housing," the Examiner must construe this claim feature as an energy source in which the electrical and chemical components alone (without a separate casing) are placed into the first chamber.

Finally, the Examiner's comments fail to indicate any reason or motivation why one of ordinary skill in the prior art would have been taught by the teachings of the applied references that such a feature ("wherein the energy storage is disposed directly within the first chamber without the provision of a separate energy storage housing,") would have been an obvious modification of the Baumann et al. or Kolenik patents.

Besides the fact noted above that Kolenik actually shows batteries in their own housings, it is clear that those of ordinary skill would have understood from the teachings of patentees (as well as the other patent documents discussed above) that the "direct voltage source" of Baumann et al. and the "standard battery" of Kolenik would include the electrical/chemical components placed inside their own housing (which makes shipping, storage and handling convenient). Thus, the Examiner's rejections under § 103(a) are based upon unsupportable assertions, and since the cited prior art

patents fail to teach or even remotely suggest the claimed invention, the outstanding rejections must be withdrawn.

The additional prior art that has been cited, but not applied by the Examiner in a rejection in the Office Action of May 21, 2004, has been taken into consideration during formulation of this response. However, since this art was not considered by the Examiner to be of sufficient relevance to apply against any of the claims, no detailed comments thereon are believed to be warranted at this time.

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise, which could be eliminated through discussions with applicant's representative, then the Examiner is invited to contact the undersigned by telephone in order that the further prosecution of this application can thereby be expedited.

Respectfully submitted,



David S. Safran
Registration No. 27,997

NIXON PEABODY LLP
Suite 900
401 9th Street, N.W.
Washington D.C. 20004

Telephone: (703) 827-8094

DSS:kmm

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